

103^D CONGRESS
2^D SESSION

S. 2531

To amend the Employee Retirement Income Security Act of 1974 to improve the pension and welfare benefits of working men and women, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 12), 1994

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve the pension and welfare benefits of working men and women, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF ERISA.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Bill of Rights Act of 1994”.

6 (b) ERISA.—Except as otherwise expressly provided,
7 whenever in this Act an amendment or repeal is expressed
8 in terms of an amendment to, or repeal of, a section or
9 other provision, the reference shall be considered to be

1 made to a section or other provision of the Employee Re-
2 tirement Income Security Act of 1974.

3 **SEC. 2. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—The Congress finds that—

5 (1) 1994 celebrates the twentieth anniversary of
6 the Employee Retirement Income Security Act of
7 1974, and

8 (2) the pension and welfare benefit rights of
9 workers and retirees established by that Act need to
10 be clearly set forth and strengthened.

11 (b) PURPOSE.—It is the purpose of this Act to set
12 forth and to implement the Pension Bill of Rights.

13 **SEC. 3. PENSION BILL OF RIGHTS.**

14 The Pension Bill of Rights is as follows:

15 (1) Employees have the right to be included in
16 a pension plan sponsored by their employer.

17 (2) Employees have the right to fair treatment
18 in earning retirement benefits.

19 (3) Employees have the right to timely, accu-
20 rate, and understandable information about their
21 pension and welfare benefits.

22 (4) Employees have the right to receive infor-
23 mation and to provide advice on the investment of
24 pension plan assets.

1 (5) Employees have the right to have their pen-
 2 sion plans adequately funded and invested to pro-
 3 mote long-term economic security.

4 (6) Employees have the right to Department of
 5 Labor assistance in protecting their pension and wel-
 6 fare benefit rights.

7 (7) Employees have the right to effective court
 8 enforcement of their legal rights.

9 (8) Spouses of employees have the right to equi-
 10 table treatment.

11 (9) Employees have the right to pension port-
 12 ability.

13 (10) Employees have the right to have their
 14 pension money protected against fraud and abuse.

15 **TITLE I—PROVISIONS RELATING**
 16 **TO EMPLOYEES’ PENSION**
 17 **RIGHTS**

18 **Subtitle A—Right of Inclusion in**
 19 **Pension Plan**

20 **SEC. 101. MINIMUM COVERAGE REQUIREMENTS.**

21 (a) IN GENERAL.—Part 2 of subtitle B of title I (29
 22 U.S.C. 201 et seq.) is amended by inserting after section
 23 201 the following new section:

1 “MINIMUM COVERAGE REQUIREMENTS

2 “SEC. 201A. (a) GENERAL RULE.—Each pension
3 plan maintained by an employer shall benefit all employees
4 of the employer.

5 “(b) EXCLUSION OF CERTAIN EMPLOYEES.—For
6 purposes of this section, there shall be excluded from con-
7 sideration—

8 “(1) employees who are included in a unit of
9 employees covered by an agreement which, as deter-
10 mined in accordance with regulations issued by the
11 Secretary, constitutes a collective bargaining agree-
12 ment between employee representatives and one or
13 more employers, if there is evidence that retirement
14 benefits were the subject of good faith bargaining
15 between such employee representatives and such em-
16 ployer or employers,

17 “(2) in the case of a trust established or main-
18 tained pursuant to an agreement which, as deter-
19 mined in accordance with regulations issued by the
20 Secretary, constitutes a collective bargaining agree-
21 ment between airline pilots represented in accord-
22 ance with title II of the Railway Labor Act and one
23 or more employers, all employees not covered by
24 such agreement, and

1 “(3) employees who are nonresident aliens and
2 who receive no earned income (within the meaning
3 of section 911(d)(2) of the Internal Revenue Code of
4 1986) from the employer which constitutes income
5 from sources within the United States (within the
6 meaning of section 861(a)(3) of such Code).

7 Paragraph (1) shall not apply with respect to coverage of
8 employees under a plan pursuant to an agreement under
9 such paragraph. Paragraph (2) shall not apply in the case
10 of a plan which provides contributions or benefits for em-
11 ployees whose principal duties are not customarily per-
12 formed aboard aircraft in flight.

13 “(c) EXCLUSION OF EMPLOYEES NOT MEETING AGE
14 AND SERVICE REQUIREMENTS.—

15 “(1) IN GENERAL.—If a plan—

16 “(A) prescribes, consistent with section
17 202(a), minimum age and service requirements
18 as a condition of participation, and

19 “(B) excludes all employees not meeting
20 such requirements from participation,
21 then such employees shall be excluded from consider-
22 ation for purposes of this section.

23 “(2) REQUIREMENTS MAY BE MET SEPARATELY
24 WITH RESPECT TO EXCLUDED GROUP.—If employees
25 not meeting the minimum age or service require-

1 ments of section 202(a)(1) (without regard to sub-
2 paragraph (B) thereof) are covered under a plan of
3 the employer which meets the requirements of sub-
4 section (a) separately with respect to such employ-
5 ees, such employees may be excluded from consider-
6 ation in determining whether any plan of the em-
7 ployer meets the requirements of subsection (a).

8 “(3) REQUIREMENTS NOT TREATED AS BEING
9 MET BEFORE ENTRY DATE.—An employee shall not
10 be treated as meeting the age and service require-
11 ments described in this subsection until the first
12 date on which, under the plan, any employee with
13 the same age and service would be eligible to com-
14 mence participation in the plan.

15 “(d) LINE OF BUSINESS EXCEPTION.—

16 “(1) IN GENERAL.—If, under section 414(r) of
17 the Internal Revenue Code of 1986, an employer is
18 treated as operating separate lines of business for a
19 year, the employer may apply the requirements of
20 this section for such year separately with respect to
21 employees in each separate line of business.

22 “(2) PLAN MUST BE NONDISCRIMINATORY.—
23 Paragraph (1) shall not apply with respect to any
24 plan maintained by an employer unless such plan
25 benefits such employees as qualify under a classifica-

1 tion set up by the employer and found by the Sec-
 2 retary of the Treasury not to be discriminatory in
 3 favor of highly compensated employees.

4 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
 5 poses of this section—

6 “(1) HIGHLY COMPENSATED EMPLOYEE.—The
 7 term ‘highly compensated employee’ has the mean-
 8 ing given such term by section 414(q) of the Inter-
 9 nal Revenue Code of 1986.

10 “(2) AGGREGATION RULES.—An employer may
 11 elect to designate—

12 “(A) 2 or more trusts,

13 “(B) 1 or more trusts and 1 or more annu-
 14 ity plans, or

15 “(C) 2 or more annuity plans,

16 as part of 1 plan to determine whether the require-
 17 ments of this section are met with respect to such
 18 plan. If an employer elects to treat any trusts or an-
 19 nuity plans as 1 plan under this paragraph, such
 20 trusts or annuity plans shall be treated as 1 plan for
 21 purposes of section 401(a)(4) of such Code.

22 “(3) SPECIAL RULES FOR CERTAIN DISPOSI-
 23 TIONS OR ACQUISITIONS.—

24 “(A) IN GENERAL.—If a person becomes,
 25 or ceases to be, a member of a group described

1 in subsection (b), (c), (m), or (o) of section 414
2 of such Code, then the requirements of this sec-
3 tion shall be treated as having been met during
4 the transition period with respect to any plan
5 covering employees of such person or any other
6 member of such group if—

7 “(i) such requirements were met im-
8 mediately before each such change, and

9 “(ii) the coverage under such plan is
10 not significantly changed during the transi-
11 tion period (other than by reason of the
12 change in members of a group) or such
13 plan meets such other requirements as the
14 Secretary may prescribe by regulation.

15 “(B) TRANSITION PERIOD.—For purposes
16 of subparagraph (A), the term ‘transition pe-
17 riod’ means the period—

18 “(i) beginning on the date of the
19 change in members of a group, and

20 “(ii) ending on the last day of the 1st
21 plan year beginning after the date of such
22 change.

23 “(4) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as may be necessary or ap-
25 propriate to carry out the purposes of this section.”

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions for part 2 of subtitle B of title I is amended by in-
 3 serting after the item relating to section 201 the following
 4 new item:

“Sec. 201A. Minimum coverage requirements.”

5 **SEC. 102. MINIMUM PARTICIPATION REQUIREMENTS.**

6 (a) HOURS REQUIRED FOR YEAR OF SERVICE.—

7 (1) IN GENERAL.—Sections 202(a)(3),
 8 203(b)(2), and 204(b)(4) (29 U.S.C. 1052(a)(3),
 9 1053(b)(2), and 1054(b)(4)) are each amended by
 10 striking “1,000 hours” each place it appears and in-
 11 serting “750 hours”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Sections 202(a)(3)(D), 203(b)(2)(D),
 14 and 204(b)(4)(E) (29 U.S.C. 1052(a)(3)(D),
 15 1053(b)(2)(D), and 1054(b)(4)(E)) are each
 16 amended by striking “125 days” and inserting
 17 “94 days”.

18 (B) Sections 202(b)(5)(B) and
 19 203(b)(3)(E)(ii) (29 U.S.C. 1052(b)(5)(B) and
 20 1053(b)(3)(E)(ii)) are each amended by strik-
 21 ing “501 hours” and inserting “376 hours”.

22 (C) Section 203(b)(3)(A) (29 U.S.C.
 23 1053(b)(3)(A)) is amended by striking “500
 24 hours” and inserting “375 hours”.

1 (b) CREDIT FOR PART-TIME, SEASONAL, AND TEM-
2 PORARY EMPLOYEES.—

3 (1) MINIMUM PARTICIPATION.—Section
4 202(a)(3) (29 U.S.C. 1052(a)(3)) is amended by
5 adding at the end the following new subparagraph:

6 “(E) For purposes of this section, if an
7 employee has 500 or more but less than 750
8 hours of service during each of 2 consecutive
9 12-month periods described in subparagraph
10 (A), the employee shall be treated as having 1
11 year of service with respect to those hours of
12 service. No 12-month period shall be taken into
13 account if previously taken into account under
14 this subparagraph.”

15 (2) VESTING REQUIREMENTS.—Section
16 203(b)(2) (29 U.S.C. 1053(b)(2)) is amended by
17 adding at the end the following new subparagraph:

18 “(E) For purposes of this section, if an
19 employee has 500 or more but less than 750
20 hours of service during each of 2 consecutive
21 12-month periods described in subparagraph
22 (A), the employee shall be treated as having 1
23 year of service with respect to those hours of
24 service. No 12-month period shall be taken into

1 account if previously taken into account under
2 this subparagraph.”

3 (3) ACCRUAL.—

4 (A) IN GENERAL.—Section 204(b)(4) (29
5 U.S.C. 1054(b)(4)) is amended by inserting at
6 the end the following new subparagraph:

7 “(F) For purposes of this section, if an
8 employee has 500 or more but less than 750
9 hours of service during each of 2 consecutive
10 12-month periods described in subparagraph
11 (A), the employee shall be treated as having 1
12 year of participation with respect to those hours
13 of service. No 12-month period shall be taken
14 into account if previously taken into account
15 under this subparagraph.”

16 (B) CONFORMING AMENDMENTS.—Section
17 204(b)(4) (29 U.S.C. 1054(b)(4)), as amended
18 by subparagraph (A), is amended—

19 (i) by striking “, except as provided in
20 subparagraph (C),” in subparagraph (B),
21 and

22 (ii) by striking subparagraph (C) and
23 by redesignating subparagraphs (D), (E),
24 and (F) as subparagraphs (C), (D), and
25 (E), respectively.

1 (c) TREATMENT OF LEASED EMPLOYEES.—Para-
2 graph (6) of section 3 (29 U.S.C. 3(6)) is amended to
3 read as follows:

4 “(6)(A) The term ‘employee’ means any individ-
5 ual employed by an employer.

6 “(B)(i) Except as provided by regulations, in
7 the case of any recipient of services performed by a
8 leased employee—

9 “(I) the leased employee shall be treated as
10 an employee of the recipient, except that

11 “(II) contributions and benefits provided
12 under a plan sponsored by the leasing organiza-
13 tion which are attributable to services per-
14 formed by the leased employee for the recipient
15 shall be treated as provided by the recipient.

16 “(ii) For purposes of this subparagraph, the
17 term ‘leased employee’ means any person who is not
18 an employee of the recipient and who provides serv-
19 ices to the recipient if—

20 “(I) such services are provided pursuant to
21 an agreement between the recipient and the
22 leasing organization, and

23 “(II) such person has performed services
24 for the recipient (and any related persons) for
25 at least 750 hours during any consecutive 12-

1 month period described in section 202(a)(3)
2 (without regard to employment status).

3 “(iii) For purposes of this subparagraph, a
4 leased employee shall be treated as an employee for
5 periods after the close of the first 12-month period
6 the person is described in clause (ii)(II).”

7 (d) EMPLOYER MAY NOT REQUEST EMPLOYEE TO
8 WAIVE RIGHTS.—Section 203 (29 U.S.C. 1053) is amend-
9 ed by adding at the end the following new subsection:

10 “(f) An employer may not request an employee to
11 waive any right of coverage under, or participation in, any
12 pension plan which is granted by this title.”

13 **SEC. 103. MODEL SIMPLIFIED PENSION PLANS.**

14 (a) ESTABLISHMENT OF MODEL PLAN.—The Sec-
15 retary of Labor, in consultation with the Secretary of the
16 Treasury, shall prescribe by regulations one or more model
17 simplified pension plans which would—

18 (1) provide simplicity to employers and provide
19 adequate retirement benefits to employees upon
20 adoption by an employer, and

21 (2) constitute a plan meeting the requirements
22 of the Employee Retirement Income Security Act of
23 1974, the Internal Revenue Code of 1986, and this
24 Act, in devising a model pension plan, the Secretary
25 shall consider the adequacy of existing simplified

1 employee pension plan alternatives and may make
2 recommendations to adopt such plans as model sim-
3 plified plans.

4 (b) TIME FOR ESTABLISHMENT.—Regulations under
5 subsection (a) for the first of such plans shall be issued
6 within 12 months of the date of the enactment of this Act.

7 **SEC. 104. PENSION COVERAGE AND ADEQUACY TASK**
8 **FORCE.**

9 (a) ESTABLISHMENT.—As soon as possible after the
10 date of the enactment of this Act, the Secretary of Labor
11 shall establish a task force to study the problems relating
12 to coverage and adequacy of benefits of employees under
13 pension plans and the needs of employees under pension
14 plans. The task force shall include balanced representation
15 of employers, employees, experts in retirement policy, and
16 such other individuals as the Secretary of Labor deems
17 appropriate.

18 (b) REPORT.—The Secretary of Labor shall, no later
19 than 18 months after the date of the enactment of this
20 Act, report the results of the study to Congress under sub-
21 section (a), including recommendations for enhancing cov-
22 erage and adequacy of benefits of employees under pension
23 plans.

1 **Subtitle B—Right to Fair**
2 **Treatment in Earning Benefits**

3 **SEC. 111. RIGHT TO VESTING.**

4 (a) ELIMINATION OF SPECIAL VESTING RULE FOR
5 MULTIEMPLOYER PLANS.—Paragraph (2) of section
6 203(a) (29 U.S.C. 1053(a)(2)) is amended—

7 (1) by striking “subparagraph (A), (B), or (C)”

8 and inserting “subparagraph (A) or (B)”, and

9 (2) by striking subparagraph (C).

10 (b) IMMEDIATE VESTING OF EMPLOYER CONTRIBU-
11 TIONS TO DEFINED CONTRIBUTION PLAN.—Paragraph
12 (1) of section 203(a) (29 U.S.C. 1053(a)(1)) is amended
13 to read as follows:

14 “(1) A plan satisfies the requirements of this
15 paragraph if—

16 “(A) an employee’s rights in the employ-
17 ee’s accrued benefit derived from the employee’s
18 own contributions are nonforfeitable, and

19 “(B) in the case of an individual account
20 plan, an employee’s rights in the employee’s ac-
21 crued benefit derived from employer contribu-
22 tions are nonforfeitable.

23 **SEC. 112. ACCRUAL OF BENEFITS.**

24 (a) INTEGRATION WITH SOCIAL SECURITY AND SIMI-
25 LAR BENEFITS.—Section 204 (29 U.S.C. 1054) is amend-

1 ed by redesignating subsection (i) as subsection (j) and
2 by inserting after subsection (h) the following new sub-
3 section:

4 “(i) INTEGRATION WITH SOCIAL SECURITY AND
5 SIMILAR BENEFITS.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of law, a pension plan shall not be treated
8 as meeting the requirements of this section or sec-
9 tion 203, for contributions made after January 1,
10 1995, unless the plan meets such requirements with-
11 out taking into account contributions or benefits
12 under chapter 2 or 21 of the Internal Revenue Code
13 of 1986, title II of the Social Security Act, or any
14 other Federal or State law.

15 “(2) EXCEPTION FOR DEFINED BENEFIT
16 PLANS.—

17 “(A) IN GENERAL.—A defined benefit plan
18 shall not be treated as failing to meet the re-
19 quirement of paragraph (1) merely because the
20 plan provides that the employer-derived accrued
21 retirement benefit for any participant under the
22 plan may not exceed the excess (if any) of—

23 “(i) the participant’s final pay with
24 the employer, over

1 “(ii) the employer-derived retirement
2 benefit created under Federal or State law
3 attributable to service by the participant
4 with the employer.

5 For purposes of this clause, the employer-de-
6 rived retirement benefit created under Federal
7 or State law shall be treated as accruing ratably
8 over 35 years.

9 “(B) FINAL PAY.—For purposes of this
10 paragraph, the participant’s final pay is the
11 compensation (as defined in section 414(q)(7)
12 of the Internal Revenue Code of 1986) paid to
13 the participant by the employer for any year—

14 “(i) which ends during the 5-year pe-
15 riod ending with the year in which the par-
16 ticipant separated from service for the em-
17 ployer, and

18 “(ii) for which the participant’s total
19 compensation from the employer was high-
20 est.”

21 (b) LIMITATION ON CONDITIONING OF EMPLOYER
22 CONTRIBUTIONS ON EMPLOYEE CONTRIBUTIONS.—Sec-
23 tion 204 (29 U.S.C. 1054), as amended by subsection (a),
24 is amended by redesignating subsection (j) as subsection

1 (k) and by inserting after subsection (i) the following new
2 subsection:

3 “(j) NO MANDATORY CONTRIBUTIONS FOR EMPLOY-
4 EES BELOW SOCIAL SECURITY WAGE BASE.—Notwith-
5 standing any other provision of law, a pension plan shall
6 not be treated as meeting the requirements of this Act
7 if the plan requires an employee whose compensation for
8 a plan year does not exceed the contribution and benefit
9 base under section 230 of the Social Security Act for the
10 calendar year in which the plan year begins to make a
11 contribution for purposes of employer contributions. Noth-
12 ing in this subsection shall be construed as preventing an
13 employer from permitting an employee to match the
14 amount of employer contributions.”

15 (c) YEARS OF SERVICE FOR SUBSIDIZED EARLY RE-
16 TIREMENT BENEFITS.—Section 204(b)(4) (29 U.S.C.
17 1054(b)(4)), as amended by section 102(b)(3)(B), is
18 amended by adding at the end the following new subpara-
19 graph:

20 “(F)(i) For purposes of this subparagraph,
21 in computing the amount of the nonforfeitable
22 accrued benefit of an employee with respect to
23 a subsidized early retirement benefit provided
24 by a plan, there shall be taken into account all
25 years of service with the employer maintaining

1 the plan if the participant subsequently satisfies
2 the conditions for the subsidized early retire-
3 ment benefit while working for a successor em-
4 ployer.”

5 (d) UNIFORM RATE OF ACCRUAL.—Section 204 (29
6 U.S.C. 1054), as amended by subsections (a) and (b), is
7 amended by redesignating subsection (k) as subsection (l)
8 and by inserting after subsection (j) the following new sub-
9 section:

10 “(k) UNIFORM RATE OF ACCRUAL.—Except as pro-
11 vided in subsection (b)(1)(H), all employees shall, regard-
12 less of age or length of service, accrue benefits, and receive
13 allocations including employer contributions, at the same
14 rate for each year of service subject to existing permitted
15 limits for maximum benefits or years of service.”

16 (e) GUIDELINES FOR RATES OF ACCRUAL.—The Sec-
17 retary of Labor shall issue guidelines which recommend
18 rates of accrual under pension plans which will result in
19 the accrual of a level of benefits at normal retirement age
20 which is sufficient to maintain the average participant’s
21 preretirement standard of living. Such guidelines shall also
22 recommend methods by which such benefits should be ad-
23 justed to protect the participant from increases in the
24 cost-of-living upon retirement.

1 **Subtitle C—Right to Adequate**
2 **Funding**

3 **SEC. 121. FUNDING REQUIREMENTS.**

4 (a) 15-YEAR AMORTIZATION OF BENEFIT IN-
5 CREASES.—Clause (iii) of section 302(b)(2)(B) (29 U.S.C.
6 1082(b)(2)(B)(iii)) is amended by striking “30 plan years
7 (20 plan years in the case of a multiemployer plan)” and
8 inserting “15 plan years”.

9 (b) ACTUARIAL ASSUMPTIONS.—

10 (1) IN GENERAL.—Subparagraph (A) of section
11 302(c)(3) (29 U.S.C. 1082(c)(3)(A)) is amended to
12 read as follows:

13 “(A) each of which is reasonable (taking
14 into account the experience of the plan and rea-
15 sonable expectations), and”.

16 (2) SECRETARY MAY ESTABLISH RANGES.—Sec-
17 tion 302(c)(3) (29 U.S.C. 1092(c)(3)) is amended by
18 adding at the end the following new sentence: “Not-
19 withstanding any other provision of law, the Sec-
20 retary, in consultation with the Secretary of the
21 Treasury, shall establish for each calendar quarter a
22 range of recommended actuarial assumptions for
23 plans for the quarter. An actuary of a plan may de-
24 viate from the range if the actuary is able to dem-

1 onstrate that such deviation is reasonable for the
2 plan.”

3 **SEC. 122. SAFEGUARDS FOR ANNUITIES PURCHASED UPON**
4 **PLAN TERMINATIONS.**

5 (a) FIDUCIARY RESPONSIBILITY.—Section 404 is
6 amended by adding at the end the following new sub-
7 section:

8 “(d) A fiduciary shall ensure that the benefits of par-
9 ticipants and beneficiaries are fully protected under Fed-
10 eral or State law upon the purchase of any irrevocable in-
11 surance annuity contract.”

12 (b) CERTIFICATION OF INSURERS.—

13 (1) IN GENERAL.—Section 4041(b)(3) of such
14 Act (29 U.S.C. 1341(b)(3)) is amended—

15 (A) in subparagraph (A)(i), by inserting “,
16 with respect to which all required insurance cer-
17 tificates have been received by the corporation
18 in accordance with subparagraph (B),” after
19 “insurer”,

20 (B) by redesignating subparagraph (B) as
21 subparagraph (C), and

22 (C) by inserting after subparagraph (A)
23 the following new subparagraph:

24 “(B) PRIOR INSURANCE CERTIFICATION.—

1 “(i) IN GENERAL.—For purposes of
2 subparagraph (A), the assets of the plan
3 which are distributed by means of the pur-
4 chase of irrevocable commitments from an
5 insurer shall not be treated as distributed
6 in accordance with section 4044 unless,
7 prior to the distribution date, the corpora-
8 tion receives from the plan an insurance
9 certificate as described in clause (ii).

10 “(ii) INSURANCE CERTIFICATE.—An
11 insurance certificate referred to in clause
12 (i) shall consist of a written document, cer-
13 tified by the Insurance Commissioner (or
14 similar official) of the State in which the
15 insurer is domiciled not earlier than 30
16 days before the commencement of the final
17 distribution of assets, certifying that—

18 “(I) the insurer is licensed by the
19 State involved to do business in such
20 State,

21 “(II) the law of the State in-
22 volved provides for the maintenance
23 by the State of a fund which is re-
24 sponsible, on the failure of an insurer
25 licensed to do business within the

1 State on the termination date, to pay,
 2 as the second payor, all promised ben-
 3 efits described in clause (i) to partici-
 4 pants or beneficiaries who, on the ter-
 5 mination date, were residents of the
 6 State and maintains reciprocity agree-
 7 ments providing equivalent guarantees
 8 with States covering participants and
 9 beneficiaries who are residents of
 10 other States, and

11 “(III) such fund has reserves suf-
 12 ficient to meet (or legal authority to
 13 collect sufficient funds to meet on a
 14 timely basis) all reasonably foresee-
 15 able obligations of such fund.”

16 (2) CONFORMING AMENDMENT.—Section
 17 4041(b)(4) of such Act (29 U.S.C. 1341(b)(4)) is
 18 amended by striking “paragraph (3)(B)” and insert-
 19 ing “paragraph (3)(C)”.

20 (c) PREMIUM REQUIREMENTS ON INSURERS.—

21 (1) IN GENERAL.—Subtitle A of title IV is
 22 amended by adding at the end the following new
 23 part:

1 “Part 2—Annuity Insurance

2 “PAYMENT OF PREMIUMS

3 “SEC. 4011. (a) IN GENERAL.—The corporation may
4 establish a separate premium system to fund the guaran-
5 teed payment of retirement benefits to participants and
6 beneficiaries covered by annuity contracts. Such system
7 may include—

8 “(1) a premium for participants or beneficiaries
9 who had been annuitized before the effective date of
10 this section, and

11 “(2) may provide for a one-time premium rath-
12 er than annual premiums.

13 “(b) USE OF FUNDS.—The corporation may allocate
14 premiums received under this section to any of the funds
15 established under section 4005 or may establish a separate
16 fund which is used only to pay amounts guaranteed by
17 reason of section 4011.”

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 4001(a)(5) is amended by in-
20 serting “or 4011(c)” after “4005”.

21 (B) Subtitle B of title IV is amended by
22 inserting immediately after the heading:

23 “Part 1—General Provisions”.

24 (C) The table of contents for subtitle B of
25 title IV is amended—

1 (i) by inserting after the item relating
 2 to subtitle B the following new item:

“Part 1—General Provisions”,

3 and

4 (ii) by inserting at the end the follow-
 5 ing new items:

“Part 2—Annuity Insurance

“Sec. 4011. Payment of premiums.”

6 **SEC. 123. PROHIBITION ON RETROACTIVE TERMINATION**
 7 **OF PLANS.**

8 Paragraph (1) of section 4041(a) (29 U.S.C.
 9 1341(a)(1)) is amended by adding at the end the following
 10 new sentence: “Any such termination may occur only after
 11 approval by the corporation.”

12 **SEC. 124. INVESTMENT OF PLAN ASSETS.**

13 Subparagraph (B) of section 404(a)(1) (29 U.S.C.
 14 1104(a)(1)(B)) is amended to read as follows:

15 “(i) with the care, skill, prudence, and
 16 diligence under the circumstances then
 17 prevailing that a prudent person acting in
 18 a like capacity and familiar with such mat-
 19 ters would use in the conduct of an enter-
 20 prise of a like character and with like
 21 aims; and

1 “(ii) by investing the assets of the
 2 plan so as to ensure the economic security
 3 and long-term interests of the participants
 4 and beneficiaries;”.

5 **Subtitle D—Pension Portability**

6 **SEC. 131. REQUIREMENT OF PORTABLE PENSION AC-** 7 **COUNTS.**

8 (a) IN GENERAL.—Part 2 of subtitle B of title I (29
 9 U.S.C. 1051 et seq.) is amended by inserting after section
 10 205 the following new section:

11 “PORTABILITY REQUIREMENTS FOR DEFINED
 12 CONTRIBUTION PLANS

13 “SEC. 205A. (a) DIRECT TRANSFERS.—

14 “(1) IN GENERAL.—Each defined contribution
 15 plan shall, at the election of an employee upon sepa-
 16 ration from service, make a direct trustee-to-trustee
 17 transfer of the portion of the employee’s eligible
 18 amount specified in the election to a portable pen-
 19 sion account specified in the election which—

20 “(A) is maintained by a qualified pension
 21 plan which voluntarily agrees to accept the
 22 transfer, or

23 “(B) is established by the individual on the
 24 individual’s own behalf.

25 “(2) TIME FOR TRANSFER.—The transfer
 26 under paragraph (1) shall be made no later than 60

1 days after the date of the employee's separation
2 from service unless the parties agree to a transfer at
3 a later date.

4 “(b) PORTABLE PENSION ACCOUNTS.—For purposes
5 of this section—

6 “(1) IN GENERAL.—The term ‘portable pension
7 account’ means—

8 “(A) in the case of a qualified pension
9 plan, an individual account plan, an individual
10 account within the plan, or simplified employee
11 pension under section 408(k) of the Internal
12 Revenue Code of 1986 meeting the require-
13 ments of the following paragraphs of this sub-
14 section, and

15 “(B) in the case of an individual, an indi-
16 vidual retirement plan meeting such require-
17 ments.

18 “(2) DISTRIBUTION REQUIREMENTS.—

19 “(A) IN GENERAL.—The requirements of
20 this paragraph are met if distributions from the
21 account—

22 “(i) may only be made in a permitted
23 retirement income form, and

24 “(ii) may only be made with the con-
25 sent of the participant.

1 “(B) PERMITTED RETIREMENT INCOME
2 FORM.—For purposes of subparagraph (A), a
3 permitted retirement income form is as follows:

4 “(i) A qualified joint and survivor an-
5 nuity (within the meaning of section
6 205(d)).

7 “(ii) Any other joint life annuity (in-
8 cluding a cash refund annuity).

9 “(iii) A single life annuity (including a
10 cash refund annuity).

11 “(iv) Any series of substantially equal
12 periodic payments described in section
13 72(t)(2)(A)(iv) of the Internal Revenue
14 Code of 1986 which are not part of an an-
15 nuity described in the preceding clauses.

16 “(3) SPOUSAL CONSENT.—The requirements of
17 this paragraph shall not be met unless the account
18 provides that any election as to form of benefit must
19 meet spousal consent requirements which are iden-
20 tical to the requirements of section 205(c)(2).

21 “(c) ELIGIBLE AMOUNT.—For purposes of this sec-
22 tion the term ‘eligible amount’ means, with respect to any
23 participant, the balance to the credit of the participant
24 as of the date of the distribution, including interest on
25 such balance through the date of the distribution.

1 “(d) OTHER DEFINITIONS AND RULES.—For pur-
2 poses of this section—

3 “(1) QUALIFIED PLAN.—The term ‘qualified
4 plan’ means—

5 “(A) a plan described in section 401(a) of
6 the Internal Revenue Code of 1986 which in-
7 cludes a trust which is exempt from tax under
8 section 501(a) of such Code,

9 “(B) an annuity plan described in section
10 403(a) of such Code, and

11 “(C) an annuity contract described in sec-
12 tion 403(b) of such Code.

13 “(2) INDIVIDUAL RETIREMENT PLAN.—The
14 term ‘individual retirement plan’ means—

15 “(A) an individual retirement account de-
16 scribed in section 408(a) of such Code, and

17 “(B) an individual retirement annuity de-
18 scribed in section 408(b) of such Code.

19 “(3) BENEFICIARIES OR ALTERNATE PAYEES.—
20 In the case of an individual who is a beneficiary of
21 the participant or an alternate payee (within the
22 meaning of section 206(d)(3)(K)) under a plan, such
23 individual shall be treated in the same manner as if
24 a participant in the plan.”

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 204(g)(2) of such Act (29 U.S.C.
 2 1054(g)(2)) is amended by adding at the end the
 3 following new sentence: “Except as otherwise pro-
 4 vided in regulations of the Secretary of Labor and
 5 the Secretary of the Treasury, the requirements of
 6 subparagraph (B) shall not be treated as violated in
 7 the case of a direct trustee-to-trustee transfer de-
 8 scribed in section 205A.”

9 (2) Section 204(d) of such Act (29 U.S.C.
 10 1054(d)) is amended—

11 (A) in paragraph (1), by striking “or”,

12 (B) in paragraph (2), by striking the pe-
 13 riod and inserting “, or”, and

14 (C) by inserting after paragraph (2) the
 15 following new paragraph:

16 “(3) a direct trustee-to-trustee transfer de-
 17 scribed in section 205A.”

18 (3) The table of contents for part 2 of subtitle
 19 B of title I of such Act is amended by inserting after
 20 the item relating to section 205 the following new
 21 item:

“Sec. 205A. Portability requirements for defined contribution plans.”

22 **SEC. 132. RECIPROCITY AGREEMENTS BETWEEN INDUSTRY**
 23 **AND LABOR FUNDS.**

24 (a) ESTABLISHMENT.—The Secretary of Labor shall
 25 establish guidelines for plans maintained pursuant to col-

1 lective bargaining agreements between employers and em-
 2 ployee representatives in order to assist and encourage 2
 3 or more plans to enter into agreements under which—

4 (1) the plans would maintain portable pension
 5 accounts described in section 205A of the Employee
 6 Retirement Income Security Act of 1974 (as added
 7 by section 121) for employees who terminate em-
 8 ployment covered by 1 plan and begin employment
 9 covered by another, or

10 (2) the plans would make arrangements for em-
 11 ployees to transfer accrued benefits and vesting
 12 rights from one plan to another.

13 **SEC. 133. INFLATION ADJUSTMENT FOR DEFERRED VEST-**
 14 **ED BENEFITS.**

15 (a) IN GENERAL.—Section 203 (29 U.S.C. 1053) is
 16 amended by adding at the end the following new sub-
 17 section:

18 “(f) DEFERRED NONFORFEITABLE BENEFITS.—If
 19 an employee’s participation in a defined benefit plan is ter-
 20 minated before the date the employee is eligible for pay-
 21 ment of an immediate annuity under the plan—

22 “(1) subsection (e) shall not apply, and

23 “(2) the plan shall provide that the employee
 24 may elect—

1 “(A) to have the plan immediately distrib-
 2 ute, subject to section 205 of this Act, the
 3 present value (using the interest rate specified
 4 by the Secretary) of the employee’s nonforfeit-
 5 able benefit, or

6 “(B) to have the plan provide inflation ad-
 7 justments (at the rates specified by the Sec-
 8 retary) to such benefit during the period begin-
 9 ning with the date of separation and ending
 10 with the date the earliest benefit is received
 11 under the plan.”

12 (b) ACCRUED BENEFIT.—Section 204(d) (29 U.S.C.
 13 1054(d)) is amended by adding at the end the following
 14 new sentence: “An employee’s accrued benefit under a
 15 plan shall be increased by any inflation adjustment under
 16 section 203(f)(2)(B).”

17 **Subtitle E—Spousal Rights**

18 **SEC. 141. DIVISION OF PENSION BENEFITS UPON DIVORCE.**

19 (a) IN GENERAL.—Section 206 (29 U.S.C. 1056) is
 20 amended by adding at the end the following new sub-
 21 section:

22 “(e)(1) In the case of a divorce of a participant in
 23 a pension plan from a spouse who is, immediately before
 24 the divorce, a beneficiary under the plan, the plan shall
 25 provide that at least 50 percent of the marital share of

1 the accrued benefit (as of the date of the divorce) of the
2 participant under the plan ceases to be an accrued benefit
3 of such participant and becomes an accrued benefit of
4 such divorced spouse. Such accrued benefit shall be deter-
5 mined and payable upon the earliest of the retirement of
6 the participant, the participant's normal retirement age
7 under the plan, the participant's death, or the termination
8 of the plan. This paragraph shall not apply to the extent
9 that a qualified domestic relations order in connection
10 with such divorce provides otherwise.

11 “(2) Paragraph (1) shall not be construed—

12 “(A) to require a plan to provide any type or
13 form of benefit, or any option, not otherwise pro-
14 vided under the plan,

15 “(B) to require the plan to provide increased
16 benefits (determined on the basis of actuarial value),

17 “(C) to require the payment of benefits to the
18 divorced spouse which are required to be paid to an-
19 other individual in accordance with this subsection
20 or pursuant to a domestic relations order previously
21 determined to be a qualified domestic relations
22 order, or

23 “(D) to require payment of benefits to the di-
24 vorced spouse in the form of a joint and survivor an-

1 nuity with respect to the divorced spouse and the di-
2 vorced spouse's subsequent spouse.

3 “(3) For purposes of this subsection—

4 “(A) The terms ‘domestic relations order’ and
5 ‘qualified domestic relations order’ have the mean-
6 ings given such terms by subsection (d)(3)(B).

7 “(B) The term ‘marital share’ means, in con-
8 nection with an accrued benefit under a pension
9 plan, the product derived by multiplying—

10 “(i) the actuarial present value of the ac-
11 crued benefit, by

12 “(ii) a fraction—

13 “(I) the numerator of which is the pe-
14 riod of time, starting with the date of mar-
15 riage and ending with the date of divorce
16 between the spouse and the participant in
17 the plan, which constitutes creditable serv-
18 ice by the participant under the plan, and

19 “(II) the denominator of which is the
20 total period of time which constitutes the
21 years of participation by the participant
22 under the plan.

23 “(C) The term ‘qualified joint and survivor an-
24 nuity’ has the meaning given such term by section
25 205(d).

1 “(4) In prescribing regulations under this subsection,
 2 the Secretary shall consult with the Secretary of the
 3 Treasury.”

4 (b) CONFORMING AMENDMENTS.—Section 206(d)
 5 (29 U.S.C. 1056(d)) is amended—

6 (1) in the first sentence of paragraph (3), by
 7 inserting “or if such creation, assignment, or rec-
 8 ognition pursuant to such order is necessary for
 9 compliance with the requirements of subsection (e)”
 10 before the period,

11 (2) in paragraph (3)(D)(iii), by inserting “or to
 12 a divorced spouse of the participant in connection
 13 with a previously occurring divorce as required
 14 under subsection (e)” before the period, and

15 (3) in paragraph (3)(H)(iii), by striking “if
 16 there had been no order” and inserting “in accord-
 17 ance with subsection (e) as if there had been no
 18 qualified domestic relations order”.

19 **SEC. 142. EXTENSION OF APPLICATION OF JOINT AND SUR-**
 20 **VIVOR ANNUITY RULES.**

21 (a) IN GENERAL.—Section 205(a) (29 U.S.C.
 22 1055(a)) is amended by inserting “and each plan de-
 23 scribed in subsection (l)” after “applies”.

24 (b) PLANS AFFECTED.—Section 205 (29 U.S.C.
 25 1055) is amended by redesignating subsection (l) as sub-

1 section (m) and by inserting after subsection (k) the fol-
2 lowing new subsection:

3 “(l)(1) A plan is described in this subsection if it is—

4 “(A) a qualified cash or deferred arrangement
5 described in section 401(k) of the Internal Revenue
6 Code of 1986,

7 “(B) an annuity contract described in section
8 403(b) of such Code,

9 “(C) a simplified employee pension described in
10 section 408(k) of such Code, or

11 “(D) an individual retirement plan (as defined
12 in section 7701(a)(37)) of such Code.

13 “(2) For purposes of this section, an individual for
14 whom an arrangement, contract, pension, or plan was pur-
15 chased or established shall be treated as the participant.

16 “(3) If a plan described in this subsection is adminis-
17 tered by a person which is not authorized by law to make
18 payments in a form required by this section, such person
19 shall make such payments as a stream of payments deter-
20 mined on the basis of the joint life expectancies of the
21 participant and the participant’s spouse or may purchase
22 an annuity contract providing benefits in a joint and survi-
23 vor form.”

1 **SEC. 143. MODIFICATIONS OF JOINT AND SURVIVOR AND**
2 **PRERETIREMENT SURVIVOR ANNUITY RE-**
3 **QUIREMENTS.**

4 (a) CONSENT FORM.—Section 205(c) (29 U.S.C.
5 1055(c)) is amended by adding at the end the following
6 new paragraph:

7 “(8) The Secretary, in consultation with the
8 Secretary of Treasury, shall develop a form for the
9 spousal consent required under paragraph (2)
10 which—

11 “(A) is written in a manner calculated to
12 be understood by the average person, and

13 “(B) discloses in plain form whether—

14 “(i) the waiver is irrevocable, and

15 “(ii) the waiver may be changed by a
16 qualified domestic relations order in the
17 event of a legal separation or divorce.”

18 (b) PRERETIREMENT ANNUITY AVAILABLE TO
19 FORMER SPOUSES.—

20 (1) IN GENERAL.—Paragraph (2) of section
21 205(a) (29 U.S.C. 1055(a)(2)) is amended—

22 (A) by inserting “or an eligible surviving
23 former spouse” after “a surviving spouse”, and

24 (B) by inserting “or to the eligible surviv-
25 ing former spouse” after “the surviving
26 spouse”.

1 (2) ELIGIBLE SURVIVING FORMER SPOUSE.—

2 Section 205(h) (29 U.S.C. 1055(h)) is amended by
3 adding at the end the following new paragraph:

4 “(4) The term ‘eligible surviving former spouse’
5 means, with respect to any participant in a pension
6 plan, a former spouse of the participant who sur-
7 vives the participant but only if—

8 “(A) there is no qualified domestic rela-
9 tions order providing for a payment other than
10 a qualified preretirement survivor annuity to
11 the former spouse,

12 “(B) the participant did not choose any
13 other beneficiary under the plan after the di-
14 vorce, and

15 “(C) under the plan there is no surviving
16 spouse eligible for a qualified preretirement sur-
17 vivor annuity.”

18 (c) AMOUNT OF ANNUITY.—

19 (1) JOINT AND SURVIVOR ANNUITY.—Para-
20 graph (1) of section 205(d) (29 U.S.C. 1055(d)(1))
21 is amended by striking “50 percent” and inserting
22 “66 2/3 percent”.

23 (2) PRERETIREMENT ANNUITY.—Paragraph (2)
24 of section 205(e) (29 U.S.C. (e)(2)) is amended by

1 striking “50 percent” and inserting “66 2/3 per-
2 cent”.

3 **TITLE II—PROTECTION OF**
4 **EMPLOYEES’ PENSION RIGHTS**
5 **Subtitle A—Benefit Information**

6 **SEC. 201. PLAN OR EMPLOYER REPRESENTATIONS.**

7 (a) IN GENERAL.—Part 5 of subtitle B of title I (29
8 U.S.C. 1131 et seq.) is amended by adding at the end
9 the following new section:

10 “RELIANCE ON EMPLOYER OR PLAN REPRESENTATIONS

11 “SEC. 516. (a) PROHIBITION ON MISREPRESENTA-
12 TION.—No employer, plan administrator, or fiduciary
13 shall misrepresent to employees, participants, or bene-
14 ficiaries their rights under an employee benefit plan.

15 “(b) RELIANCE.—In any action brought under this
16 title to enforce any right of a participant or beneficiary
17 under an employee benefit plan, the participant or bene-
18 ficiary shall have a right to reasonably rely on all written
19 documents provided by the plan administrator or employer
20 maintaining the plan.

21 “(c) CORRECTIONS.—Nothing in the section shall
22 preclude a plan administrator, fiduciary, or employer from
23 correcting any mistake within a reasonable period of time.
24 The Secretary may issue regulations to define a reasonable
25 period of time.”

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents for part 5 of subtitle B of title I is amended by in-
 3 serting at the end the following new item:

“Sec. 516. Reliance on employer or plan representations.”

4 **SEC. 202. NOTICE OF RIGHTS.**

5 (a) TIME FOR FILING ANNUAL REPORT.—Section
 6 104(a)(1)(A) (29 U.S.C. 1024(a)(1)(A)) is amended by
 7 striking “210 days” and inserting “105 days”.

8 (b) ADVANCE NOTICE OF MATERIAL CHANGES.—
 9 Section 104(b) (29 U.S.C. 1024(b)) is amended by adding
 10 at the end the following new paragraph:

11 “(5) The administrator shall furnish to each
 12 participant, and to each beneficiary receiving bene-
 13 fits under the plan, notice of any material modifica-
 14 tion to the plan referred to in section 102(a)(2) at
 15 least 60 days before the modification is to take ef-
 16 fect.”

17 (c) NOTICE OF RETIREMENT BENEFIT EARNINGS.—

18 (1) APPLICATION TO MULTIEMPLOYER
 19 PLANS.—Section 105 (29 U.S.C. 1025) is amended
 20 by striking subsection (d).

21 (2) MODEL STATEMENTS.—The Secretary of
 22 Labor shall develop a model benefit statement to be
 23 used by plan administrators in complying with the
 24 requirements of section 105 of the Employee Retire-

1 ment Income Security Act of 1974. Such statement
2 shall include—

3 (A) the amount of nonforfeitable accrued
4 benefits as of the statement date which is pay-
5 able at normal retirement age under the plan,

6 (B) the amount of accrued benefits which
7 are forfeitable but which may become non-
8 forfeitable under the terms of the plan,

9 (C) the amount or percentage of any re-
10 duction due to integration of the benefit with
11 the participant's Social Security benefits or
12 similar governmental benefits,

13 (D) information on how to contact the So-
14 cial Security Administration to obtain a partici-
15 pant's personal earnings and benefit estimate
16 statement, and

17 (E) information on early retirement benefit
18 and joint and survivor annuity reductions.

19 (d) DEPARTMENT OF LABOR ASSISTANCE.—Section
20 104 (29 U.S.C. 1024) is amended by redesignating sub-
21 section (d) as subsection (e) and by inserting after sub-
22 section (c) the following new subsection:

23 “(d) The Secretary of Labor shall establish a pro-
24 gram to assist participants and beneficiaries in receiving

1 in a timely manner any information they are entitled to
2 receive under this Act.”

3 (e) PENALTIES.—Section 502(c) (29 U.S.C. 1132(c))
4 is amended by adding at the end the following new para-
5 graph:

6 “(5) The Secretary may assess a civil penalty
7 against any person failing to file any report, or to
8 make any disclosure, required by this title of up to
9 \$1,000 per day from the initial date of the failure.
10 The Secretary may waive or reduce any penalty if
11 the Secretary determines that the plan administrator
12 or fiduciary acted reasonably and in good faith or
13 the responsible party will not be able to comply with-
14 out severe financial hardship. This paragraph shall
15 not apply to any failure covered by any other para-
16 graph of this subsection.”

17 **Subtitle B—Investment**
18 **Information and Advice**

19 **SEC. 211. AUDITS.**

20 (a) FULL SCOPE AUDITS.—Subparagraph (C) of sec-
21 tion 103(a)(3) (29 U.S.C. 1023(a)(3)(C)) is amended by
22 adding at the end the following new sentence: “This sub-
23 paragraph shall not apply to any plan with 100 or more
24 participants and in the case of a plan with fewer than 100

1 participants, shall only apply to the first 2 years of each
 2 successive 3-fiscal year period.”

3 (b) MATERIAL IRREGULARITIES.—Section 103(a)(3)
 4 (29 U.S.C. 1023(a)(3)) is amended by adding at the end
 5 the following new subparagraph:

6 “(E)(i) If an independent qualified public
 7 accountant discovers any material irregularities
 8 in the examination conducted under this para-
 9 graph for any year, the accountant shall report
 10 such errors to the plan administrator.

11 “(ii) If the errors described in clause (i)
 12 are not corrected within 60 days, the independ-
 13 ent qualified public accountant shall report the
 14 uncorrected errors to the Secretary in such
 15 form and manner as the Secretary prescribes.”

16 **SEC. 212. SPECIFIC INFORMATION ON PLAN ASSETS AND**
 17 **TRANSACTIONS.**

18 (a) ADMINISTRATIVE EXPENSES; RETURNS.—

19 (1) IN GENERAL.—Subparagraph (B) of section
 20 103(b)(3) (29 U.S.C. 1023(b)(3)(B)) is amended by
 21 inserting “, including a separate, specific listing of
 22 the administrative costs of the plan, such as broker
 23 fees and other transaction fees” after “applica-
 24 tions”.

1 (2) RATES OF RETURN.—Subparagraph (C) of
2 section 103(b)(3) (29 U.S.C. 1023(b)(3)(C)) is
3 amended by inserting “, including the rate of return
4 on the assets for the year” after “value”.

5 (b) PROXY VOTES.—Section 104(b) (29 U.S.C.
6 1024(b)), as amended by section 202(b), is amended by
7 adding at the end the following new paragraph:

8 “(6)(A) Participants shall have the right to
9 confidentially vote any pension assets within their
10 discretionary control.

11 “(B) The administrator shall provide partici-
12 pants and beneficiaries with copies of plan invest-
13 ment and proxy voting policies and, within 60 days
14 of a written request of any participant or beneficiary
15 regarding a proxy vote, notify the participant or
16 beneficiary of the status and plan action on the re-
17 quested proxy votes.

18 “(C) A plan administrator may request the Sec-
19 retary to waive the requirements of subparagraph
20 (B) if the administrator believes the request was
21 made for the purpose of harassment. The Secretary
22 shall make a determination under this subparagraph
23 within 45 days of the administrator’s request.”

1 (c) TRANSACTIONS INVOLVING PARTIES IN INTER-
 2 EST.—Subparagraph (D) of section 103(b)(3) (29 U.S.C.
 3 1023(b)(3)(D)) is amended—

4 (1) by inserting “(including transactions involv-
 5 ing assets disposed of before the end of the year and
 6 transactions exempt under section 408)” after
 7 “party in interest” the first place it appears, and

8 (2) by inserting “in the case of an exempt
 9 transaction, the reasons why the transaction is ex-
 10 empt under section 408” before “the cost of”.

11 **SEC. 213. PENSION ADVISORY COMMITTEES.**

12 (a) ESTABLISHMENT.—Participants and beneficiaries
 13 covered by a pension plan may request that the plan estab-
 14 lish a pension advisory committee to provide participant
 15 advice and involvement in plan investment decisions. The
 16 committee shall be open to all interested participants and
 17 beneficiaries.

18 (b) RIGHTS.—

19 (1) INFORMATION.—Each pension advisory
 20 committee under subsection (a) shall have the right
 21 to receive, upon written request, information with re-
 22 spect to plan investment and proxy voting decisions.

23 (2) MEETINGS.—Each pension advisory com-
 24 mittee under subsection (a) may select a board of di-
 25 rectors and may conduct such meetings as deemed

8 The Secretary of Labor shall, within 18 months after
9 the date of the enactment of this Act, conduct a study
10 and report to the Congress on the feasibility of requiring
11 representation of employees, independent trustees, or
12 both, on the board of trustees of pension plans.

16 SEC. 221. DEPARTMENT OF LABOR REQUIRED TO PROVIDE
17 ASSISTANCE.

(1) establish a program to assist participants and beneficiaries in understanding their rights to benefits under employee benefit plans, and

(2) to the extent feasible, assist participants in obtaining such benefits, including through civil actions under section 502 of the Employee Retirement Income Security Act of 1974.

1 (b) INTERAGENCY PROGRAM.—The Secretary of
2 Labor shall establish a program with the Secretary of the
3 Treasury and the heads of other appropriate Federal
4 agencies which shall—

5 (1) coordinate assistance to participants and
6 beneficiaries in obtaining documents and pursuing
7 benefit claims,

8 (2) provide for the issuance of opinions and ad-
9 vice on applicable Federal law and regulations, and

10 (3) provide for the referral of benefit claims to
11 the appropriate Internal Revenue Service district of-
12 fice to determine compliance with applicable Federal
13 law and regulations and to the regional office of the
14 Department of Labor to protect individual benefit
15 rights.

16 The secretary of labor shall designate an employee to serve
17 as the ombuds officer to coordinate and supervise the pro-
18 gram.

19 (c) VOLUNTARY ASSISTANCE FUND.—

20 (1) IN GENERAL.—The Secretary of Labor may
21 establish a voluntary assistance fund which shall
22 consist of voluntary contributions from employers,
23 employee benefit plans, and other individuals to sup-
24 plement departmental assistance to participants,
25 beneficiaries, and plans.

1 (2) USE OF FUNDS.—Amounts received shall be
2 held in a separate trust fund and are appropriated
3 to supplement assistance in the programs described
4 in subsections (a) and (b).

5 (3) REPORT.—The Secretary of Labor shall re-
6 port to the Congress each year on the receipts and
7 disbursements of the fund for the preceding year.
8 The report shall include the Secretary’s rec-
9 ommendations on requiring mandatory contributions
10 to the fund.

11 **SEC. 222. IMPROVEMENTS IN CLAIMS PROCEDURE.**

12 (a) CLAIMS REVIEW REQUIREMENTS.—Section 503
13 (29 U.S.C. 1133) is amended—

14 (1) by inserting “(a) IN GENERAL.—” after
15 “SEC. 503.”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(b) CLAIMS REVIEW REQUIREMENTS FOR EM-
19 PLOYEE BENEFIT PLANS.—

20 “(1) IN GENERAL.—An employee benefit plan
21 shall be treated as complying with the requirements
22 of subsection (a) only if such plan complies with the
23 following requirements:

24 “(A) TIME LIMIT FOR CONSIDERATION OF
25 COMPLETED CLAIMS.—An employee benefit

1 plan shall provide to any participant or bene-
2 ficiary claiming benefits under the plan a writ-
3 ten notice of the plan's approval or denial of
4 the claim within 60 days after submission of
5 the claim under reasonable procedures estab-
6 lished by the plan. In any case in which the
7 claim is denied, the plan shall, within 5 days
8 after the date of the determination to deny the
9 claim, provide the claimant with a written no-
10 tice setting forth the reasons for the denial, to-
11 gether with notice of the right to and proce-
12 dures to appeal the denial under subparagraph
13 (B).

14 “(B) PLAN’S DUTY TO REVIEW DENIALS
15 UPON TIMELY REQUEST.—The plan shall review
16 its denial of the claim if the claimant submits
17 to the plan a written request for reconsideration
18 of the claim before 60 days after receipt of
19 written notice from the plan of the denial. The
20 plan shall waive the 60-day limit if the partici-
21 pant or beneficiary demonstrates a reasonable
22 basis for not being able to comply with such re-
23 quirement.

24 “(C) TIME LIMIT FOR REVIEW.—The plan
25 shall complete any review required under sub-

1 paragraph (B), and shall provide written notice
2 of the plan's decision pursuant to such review,
3 before 60 days after receipt of the request for
4 reconsideration.

5 “(D) DE NOVO REVIEWS.—Any review re-
6 quired under subparagraph (B)—

7 “(i) shall be de novo,

8 “(ii) shall be conducted by an individ-
9 ual who did not make the initial decision
10 denying the claim and who is authorized to
11 approve payment of the claim, and

12 “(iii) shall include review by a quali-
13 fied physician if the resolution of any is-
14 sues involved requires medical expertise.

15 “(2) EMERGENCY REQUEST FOR
16 PREAUTHORIZATION.—

17 “(A) IN GENERAL.—This paragraph ap-
18 plies in the case of any request by or on behalf
19 of a participant or beneficiary for
20 preauthorization of services which is submitted
21 to a group health plan prior to receipt of such
22 services and which involves urgent treatment
23 for a life-threatening illness.

24 “(B) SHORTENED TIME LIMIT FOR CON-
25 sideration of requests for

1 PREAUTHORIZATION.—Notwithstanding para-
2 graph (1)(A), a group health plan shall approve
3 or deny any request described in subparagraph
4 (A) before 24 hours after submission of the re-
5 quest to the plan.

6 “(C) EXPEDITED REVIEW.—The plan shall
7 review, upon request of a participant or bene-
8 ficiary, any determination to deny a request for
9 preauthorization described in subparagraph (A)
10 before 5 days after the date of the request. Any
11 such review shall be conducted in accordance
12 with the requirements of paragraph (1)(D) as if
13 the request were a claim to which such para-
14 graph applies.

15 “(D) EXPEDITED EXHAUSTION OF PLAN
16 REMEDIES.—Upon completion of the review re-
17 quired under subparagraph (C), the request for
18 preauthorization shall be treated as a claim
19 with respect to which all remedies under the
20 plan provided pursuant to this section are ex-
21 hausted for purposes of further action under
22 this part.

23 “(E) DENIAL OF PREVIOUSLY AUTHOR-
24 IZED CLAIMS NOT PERMITTED.—In any case in
25 which a group health plan approves the request

1 of any person for preauthorization described in
2 subparagraph (A)—

3 “(i) the plan may not subsequently
4 deny any claim by such person for such
5 services, unless the plan makes a showing
6 of intentional misrepresentation of a mate-
7 rial fact by such person, and

8 “(ii) if the claim is denied by the plan
9 in violation of clause (i), all remedies
10 under the plan provided pursuant to this
11 section with respect to such claim shall be
12 treated as exhausted for purposes of fur-
13 ther action on the claim under this part.

14 “(F) GROUP HEALTH PLAN.—For pur-
15 poses of this paragraph, the term ‘group health
16 plan’ means any employee welfare benefit plan
17 that provides health care benefits to partici-
18 pants or beneficiaries directly or through insur-
19 ance, reimbursement, or otherwise.”

20 (b) ALTERNATIVE DISPUTE RESOLUTION PROCE-
21 DURE.—Section 503 (29 U.S.C. 1133), as amended by
22 subsection (a), is amended by adding at the end the follow-
23 ing new subsection:

24 “(c) ALTERNATIVE DISPUTE RESOLUTION PROCE-
25 DURES.—

1 “(1) IN GENERAL.—The Secretary shall estab-
2 lish an alternative dispute resolution procedure for
3 appeals of plan benefits claims denials to which sub-
4 section (a) applies. Such procedure shall be
5 nonbinding.

6 “(2) EXPERTS AND FEES.—The Secretary
7 shall—

8 “(A) maintain a roster of employee benefit
9 experts to serve as neutral experts in the proce-
10 dure under paragraph (1), and

11 “(B) assess fees as necessary from each
12 party to cover the costs of the procedure.

13 The Secretary may reduce or waive a fee under sub-
14 paragraph (B) on the basis of inability to pay.

15 “(3) NOTICE.—The Secretary shall—

16 “(A) notify individuals of the procedure es-
17 tablished under paragraph (1) or other sources
18 of assistance in resolving benefits claim dis-
19 putes, and

20 “(B) provide model information with re-
21 spect to the procedure to be included in all
22 summary plan descriptions and benefit deter-
23 minations.”

1 **Subtitle D—Court Enforcement**

2 **SEC. 231. EFFECTIVE COURT ENFORCEMENT OF EMPLOYEE**
3 **RIGHTS.**

4 (a) ATTORNEYS' FEES AND COURT COSTS.—Section
5 502(g) (29 U.S.C. 1132(g)) is amended by adding at the
6 end the following new paragraph:

7 “(3) For purposes of paragraph (1)—

8 “(A) the court may allow a reasonable at-
9 torney’s fee and costs of action, including pre-
10 judgment interest and expert witness fees, to a
11 participant or beneficiary who substantially pre-
12 vails in an action described in such paragraph
13 (without a showing of bad faith, involvement of
14 a substantial issue of law, or involvement of a
15 large number of participants), unless the court
16 determines that the interests of justice would
17 not be served by allowing such a fee and costs;
18 and

19 “(B) the court may allow a reasonable at-
20 torney’s fee and costs of action to an employer,
21 plan, or fiduciary who substantially prevails in
22 an action described in such paragraph, only if
23 the court determines that the action was frivo-
24 lous.”

1 (b) AWARDS OF DAMAGES.—Section 502 (29 U.S.C.
2 1132) is amended by adding at the end the following new
3 subsection:

4 “(m) In any action brought under this title by a par-
5 ticipant or beneficiary, a court may award reasonably fore-
6 seeable economic damages and noneconomic damages (not
7 exceeding the amount of economic damages awarded).”

8 (c) REVIEW OF BENEFIT CLAIM DENIALS.—Section
9 502(k) (29 U.S.C. 1132(k)) is amended by adding at the
10 end the following new sentence: “Any action brought
11 under subsection (a)(1)(b), (a)(3), or after any final deci-
12 sion by the plan, shall be subject to de novo review by
13 the court and the court may review all evidence pre-
14 sented.”

15 (d) STANDING.—Section 502 (29 U.S.C. 1132), as
16 amended by subsection (b), is amended by adding at the
17 end the following new subsection:

18 “(n) Any former participant or beneficiary, and any
19 individual with a colorable claim to be a participant or
20 beneficiary, shall be treated in the same manner as a par-
21 ticipant or beneficiary for purposes of standing to bring
22 a civil action under subsection (a).”

23 (e) EXHAUSTION OF ADMINISTRATIVE REMEDIES
24 WITH RESPECT TO BENEFIT CLAIM DENIALS.—Section
25 502 (29 U.S.C. 1132), as amended by subsections (b) and

1 (d), is amended by adding at the end the following new
2 subsection:

3 “(o)(1) exhaustion of plan claims procedure shall only
4 be required for benefit claims denials. Failure to exhaust
5 shall be grounds for remand by a court.”

6 (f) AMBIGUOUS TERMS IN PLAN.—Section 516, as
7 added by section 201, is amended by redesignating sub-
8 section (c) as subsection (d) and by inserting after sub-
9 section (b) the following new subsection:

10 “(c) CONSTRUCTION OF AMBIGUOUS TERMS.—For
11 purposes of applying any provision of this title in an action
12 brought under this title, the Secretary and any court shall
13 construe any ambiguous term or provision of the docu-
14 ments and instruments governing the plan in favor of par-
15 ticipants and beneficiaries of the plan.”

16 (g) ACTIONS UNDER STATE LAW.—Section 514 (29
17 U.S.C. 1144) is amended by adding at the end the follow-
18 ing new subsection:

19 “(e) Nothing in this section shall preclude an action
20 from being brought under State law against individuals
21 not treated as fiduciaries under this Act, including State
22 malpractice actions.”

Subtitle E—Protection Against Fraud and Abuse

SEC. 241. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 501 (29 U.S.C. 1131) is amended by adding at the end the following new subsection:

“(b) EMBEZZLEMENT, THEFT, OR MAIL FRAUD.—

In the case of any violation described in subsection (a) which involves embezzlement, theft, or mail fraud, a person shall, upon conviction—

“(1) be fined not more than the greater of \$10,000, or the amount involved, or

“(2) be imprisoned for not more than 10 years,

or

“(3) both.”

(b) CONFORMING AMENDMENT.—Section 501 is amended by striking “Any person” and inserting “(a) IN GENERAL.—Any person”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to violations occurring on and after the date of the enactment of this Act.

SEC. 242. FIDUCIARY REQUIREMENTS.

(a) MINIMUM BOND REQUIREMENT.—Section 412(a) (29 U.S.C. 1112(a)) is amended by inserting “(\$100,000 in the case of a fiduciary)” after “\$1,000”.

1 (b) INSURANCE.—Section 410 (29 U.S.C. 1110) is
2 amended by adding at the end the following new sub-
3 section:

4 “(c) In addition to any bond required under section
5 412, the Secretary may by regulation require fiduciaries
6 to purchase insurance to cover liability under this part
7 from and for their own account up to the limits specified
8 in the regulations.”

9 (c) WAIVER PROHIBITION.—Section 410(a) (29
10 U.S.C. 1110(a)) is amended by adding at the end the fol-
11 lowing new sentence: “A plan may not waive any recourse
12 the plan has against a fiduciary for any responsibility, ob-
13 ligation, or duty of the fiduciary under this part.”

14 (d) EFFECTIVE DATE.—

15 (1) BONDING AND INSURANCE.—The amend-
16 ments made by subsections (a) and (b) shall apply
17 to plan years beginning after December 31, 1994.

18 (2) WAIVER.—The amendment made by sub-
19 section (c) shall apply on and after the date of the
20 enactment of this Act.

1 **SEC. 243. DISCRETIONARY AWARD FOR PERSONS PROVID-**
2 **ING SECRETARY WITH INFORMATION LEAD-**
3 **ING TO COLLECTION.**

4 (a) IN GENERAL.—Section 502 (29 U.S.C. 1132), as
5 amended by section 231, is amended by adding at the end
6 the following new subsection:

7 “(p)(1) Notwithstanding any other provision of law,
8 the Secretary may pay, from amounts collected under this
9 section, an award to the person or persons who provide
10 information leading the Secretary to initiate an investiga-
11 tion, or to bring an action, which resulted in the collection
12 of the amount under this section. Such award shall be de-
13 termined by the Secretary but may not exceed 10 percent
14 of the amount collected.

15 “(2) Any determinations under this subsection, in-
16 cluding whether, to whom, or in what amount to make
17 payments, shall be in the sole discretion of the Secretary,
18 except that no such payment shall be made to any person
19 for information gained in the course of their duties as an
20 officer or employee of any Federal, State, or local govern-
21 ment agency, nor shall any relative of such person receive
22 any payment for such information. Any such determina-
23 tion shall be final and not subject to judicial review.”

24 (b) TOLL-FREE NUMBER.—The Secretary of Labor
25 shall establish a toll-free number for persons to provide
26 information described in section 502(p) of the Employee

1 Retirement Income Security Act of 1974 (as added by
2 subsection (a)).

3 **SEC. 244. AUDIT REQUIREMENT.**

4 Section 504 (29 U.S.C. 1134) is amended by adding
5 at the end the following new subsection:

6 “(d) The Secretary shall audit each year a represent-
7 ative sample of plans with fewer than 100 participants.”

8 **TITLE III—EFFECTIVE DATES**

9 **SEC. 301. EFFECTIVE DATES.**

10 (a) IN GENERAL.—Except as otherwise provided in
11 this Act, the amendments made by this Act shall apply
12 to plan years beginning after December 31, 1994.

13 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
14 PLANS.—In the case of a plan maintained pursuant to 1
15 or more collective bargaining agreements between em-
16 ployee representatives and 1 or more employers ratified
17 on or before the date of the enactment of this Act, the
18 amendments made by this Act shall apply to the first plan
19 year beginning on or after the earlier of—

20 (1) the later of—

21 (A) January 1, 1995, or

22 (B) the date on which the last of such col-
23 lective bargaining agreements terminates (de-
24 termined without regard to any extension there-

1 of after the date of the enactment of this Act),
2 or
3 (2) January 1, 1997.

4 (c) PLAN AMENDMENTS.—If any amendment made
5 by this Act requires an amendment to any plan, such plan
6 amendment shall not be required to be made before the
7 first plan year beginning on or after January 1, 1995, if—
8 (1) during the period after such amendment
9 made by this Act takes effect and before such first
10 plan year, the plan is operated in accordance with
11 the requirements of such amendment made by this
12 Act, and
13 (2) such plan amendment applies retroactively
14 to the period after such amendment made by this
15 Act takes effect and such first plan year.

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S 2531 IS—2

S 2531 IS—3

S 2531 IS—4

S 2531 IS—5